

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AVERY J. STONE, as trustee of the)	
Anita M. Stone Family Trust and the)	
Avery J. Stone Trust,)	
)	
plaintiff,)	NO. 02 C 1450
)	
v.)	Hon. Amy J. St. Eve
)	
DAVID J. DOERGE, individually,)	Magistrate Judge Keys
DAVID J. DOERGE d/b/a DOERGE)	
CAPITAL MANAGEMENT, and)	
BALIS, LEWITTES & COLEMAN, INC.,))	
)	
defendants.)	

**Plaintiff's Motion for Entry
Of Agreed Judgment Against
David J. Doerge**

Plaintiff, Avery J. Stone (Stone), as trustee of the Anita M. Stone Family Trust and the Avery J. Stone Trust (collectively the Trusts), respectfully moves the court for the entry of an agreed judgment against defendant David J. Doerge (Doerge). In support of his motion, Stone states:

1. Doerge entered into a settlement agreement with Stone dated as of May 6, 2005 (Agreement) in which Doerge agreed to pay to Stone certain sums in installments in accordance with an agreed schedule and in exchange for dismissal of the Trusts' claims against him without prejudice to reinstatement for

purposes of enforcing the Agreement.¹ Under the Agreement, Doerge agreed to pay those sums in installments according to an agreed schedule. See Declaration of Avery J. Stone, attached as Exhibit 1 (Decl) ¶¶2-3

2. The Agreement further provides that if Doerge fails to pay any installment in full, including assessed late charges, within 90 days of its due date, he consents to immediate entry of judgment, in the form of attached Stone's Declaration, against him and in favor of Stone on Counts II and IV of the Second Amended Complaint in this action as they relate to TBU Fraud Claims, for violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and common law fraud in an amount equal to 112% of all unpaid installments. The Agreement also provides that Doerge will not oppose entry of or contest, attack or otherwise appeal such judgment if entered in accordance with the Agreement and will pay the reasonable attorneys' fees incurred by Stone in enforcing the Agreement. See *id* ¶3.

3. In accordance with the Agreement, the court entered an Agreed Order of Dismissal on May 18, 2005 (docket entry 136) in which the Court dismissed the case without prejudice to its reinstatement against Doerge (attached as Exhibit 2).

4. Doerge failed to pay in full the installment due on February 15, 2007 and has failed to cure that default within the following 90 days or by the date of this Declaration. Decl, ¶4.

¹ For reasons of confidentiality, Stone has not attached the Agreement but, if directed to do so by the court, will submit a copy for *in camera* review.

5. As of the date of the Declaration, 112% of all unpaid installments under the Agreement equals \$316,000 exclusive of the attorneys' fees recoverable under Paragraph 10 of the Agreement. *Id.*

6. Given Doerge's default of the February 15, 2007 installment and failure to cure within 90 days, Stone is entitled to an agreed judgment against Doerge in the amount of \$316,000 exclusive of attorneys' fees.

7. Stone requests that in the agreed judgment the court retain jurisdiction over this matter for the purpose of overseeing the enforcement of the Agreement and ultimately awarding attorneys' fees to Stone in accordance with the Agreement when the agreed judgment has been collected.

WHEREFORE, plaintiff Stone respectfully requests that his motion be granted and that the Court enter the agreed judgment attached as Exhibit 3.²

Dated: August 20, 2007

Respectfully submitted,

AVERY J. STONE, as Trustee of the
Anita M. Stone Family Trust and the
Avery J. Stone Trust

By /s/ Donald P. Colleton
One of His Attorneys

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²As required by the court's case management procedures, Stone has submitted the proposed agreed judgment to the court via email.

List of Exhibits

1. Declaration of Avery J. Stone
2. Order of Dismissal of May 18, 2005
3. Form of Proposed Agreed Judgment